

Burris, Greg

From: Yvonne S. Erwin [yerwin@cecb.com]
Sent: Tuesday, December 29, 2009 9:31 AM
To: Doug Burlison; Wichmer, Dan; Burris, Greg
Cc: bbarrett@kpmcpa.com; Stark, Brady; Thompson, Chris; cindy4zone2@yahoo.com; Carter, David; dhall@springfieldmo.gov; 'jedwards@springfieldmo.gov'; jmcullough@springfieldmo.gov; khoman@springfieldtrust.com; 'Ron Hoffman; 'fennerlaw@yahoo.com
Subject: Pension Fund Ordinance Revisions

Gentlemen:

We appreciate the Plans and Policies Committee request that the Board of Trustees offer its input with regard to the composition of the Board and other issue affecting the operation and performance of the Pension Fund. We thank you for the time and commitment required to do this properly. Please share this email with the Committee members and others in your discretion.

It is our understanding that the Plans and Policies Committee wishes to complete the revisions to the ordinance as soon as possible. We would respectfully request that the Plans and Policies Committee take the time necessary to perform all of its due diligence, consider all perspectives and focus on quality rather than speed; the long-term ramifications of these changes rather than any artificial deadline. That said, all of the Board of Trustees Members who attended the Plans and Policies Committee meeting believe, based on the comments made, that there is a general consensus amongst all of those in the meeting with regards to almost all of the changes suggested. Most, if not all, of those will need to be memorialized as amendments to the ordinances governing the Board of Trustees.

The purpose of this memo is to recap our position with regard to the items discussed as follows:

1. Provide the Board with the power, in its discretion, if it believes it to be in the best interest of the Fund, to hire, fire and compensate an Executive Director, either as an independent contractor or an employee (full or part-time);
2. Number of Members: Most of the Board of Trustees believe it to be in the best interest of the Fund to have nine (9) to eleven (11), preferably eleven (11) voting members, plus three (3) non-voting with the minority of the voting members being representatives of the Police Officers and Fire Fighters and retirees, preferably five (5). While understanding the perception issue, those actively involved for years do not believe the Plan participants have controlled the Board. This, of course, grants non-participants majority control of the Board. In the event that Council decides to only allow three (3) participant voting members, then we agree with the recommendation that one (1) additional active Fire Fighter (two total) and one (1) additional active Police Officer (two total) should be members of the Board of Trustees, but that only one (1) active Fire Fighter and one (1) active Police Officer would be allowed to vote at any particular meeting;
3. Six (6) voting non-participant citizen members comprised of two (2) with substantial education and/or experience in financial advisory and/or investment consulting, advising and/or management, whether or not still active, (preferably representatives of a registered investment advisory firm, trust officers of a trust company authorized to do business in the State of Missouri, certified financial planners, registered representatives with a broker/dealer); one (1) preferably with substantial actuarial experience and/or education; one (1) licensed to practice law in the State of Missouri, preferably with disability experience [see Sec. 2-454 and the 2009 revisions thereto]; one (1) licensed to practice medicine in the State of Missouri preferably with disability experience; and one (1) citizen at large. In addition, one (1) City Council Member; a City Human Resource Department representative and a City Finance Department representative, all non-voting;
4. The Chairperson of the Board of Trustees to be elected by the Board rather than appointed by the City Manager or City Council for a one (1) to three (3) year term;

5. Clarify the Board's ability, in its discretion, to retain independent legal counsel(s) for any issue the Board determines, in its discretion in which it finds that the City Attorney has a conflict of interest or perceived conflict of interest that, in the best interests of the Fund, cannot and should not be waived;

6. The City Finance Department, Human Resources and other representatives shall continue to provide the same support to the Board and the Fund currently provided except to the extent the Board, in its discretion, transfers those duties to the Executive Director;

7. Removal of any Board Member [see Sec. 2-444(c)]: Revise this section as well as any other applicable section, such that any member shall be subject to removal by the City Council in the City Council's discretion, if the member fails to attend three (3) or more regularly scheduled monthly Board meetings in a row; or fails to attend five (5) or more regularly scheduled monthly Board meetings in any consecutive twelve (12) month period or conducts himself or herself in such a manner as to be in violation of his or her obligations as a member of the Board;

8. Term: Elected and appointed members to serve three (3) to five (5) year terms with no term limits. Five (5) years may deter otherwise interested citizens. Three (3) years may limit the full value of each citizen due to the start up learning curve;

9. Sec. 2-447 "Meetings of Board of Trustees": Revise to "make a quorum of five (5) in the event there are nine (9) voting members or leave it at six (6) in the event that there are eleven (11) voting members; and

10. Add a subsection (Ken Homan was correct - there is no indemnification provision specifically for this Board) requiring the City to indemnify the members of the Board of Trustees except for actions and/or omissions which are found to be reckless or constitute willful misconduct (see Sec. 2-93). Alternatively, we suggest "The City of Springfield SHALL defend, save harmless and indemnify all of its elected and/or appointed volunteers, officers and employees, against any [tort] claim or demand, whether groundless or otherwise arising out of an alleged act or omission occurring during the performance of duty except in the event such action or omission is reckless or constitutes willful or malicious conduct."

We expect substantial additional recommendations during 2010 that the new Board of Trustees, with the new Board composition, will present to Council in an effort to clarify and improve the operations of the Plan/Fund.

Sincerely,

Chip

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